

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE Q. MORGAN,

Defendant-Appellant.

UNPUBLISHED

November 21, 2000

No. 217126

Wayne Circuit Court

Criminal Division

LC No. 98-004992

Before: Gribbs, P.J., and Kelly and Sawyer, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of second-degree murder, MCL 750.317; MSA 28.549, felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of twenty-five to fifty years' imprisonment for the second-degree murder conviction, two to four years' imprisonment for the felonious assault conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to convict him of second-degree murder. In particular, he contends that the evidence was insufficient to establish the requisite intent element of second-degree murder and, at most, established only the offense of involuntary manslaughter. The elements of second degree-murder are "(1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). The element of malice has been defined as "the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. The requisite malice for second-degree murder can be inferred from evidence that the defendant "intentionally set in motion a force likely to cause death or great bodily harm." *People v Mayhew*, 236 Mich App 112, 125; 600 NW2d 370 (1999), quoting *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998).

In this case, defendant admitted to the police that, after he found a note from his girl friend Leona Love, indicating that she was breaking off their relationship, he armed himself with a loaded handgun and went to the home of Love's friend, LaTonya Champion, looking for Love. Defendant waited in the middle of the night for the women to return, pointed the gun at Love shortly after she stepped from Champion's car, and forced her to go with him. Asked during his

interrogation why he took Love at gun point, defendant replied, “Because I didn’t want no trouble. She wouldn’t do what I told her to do. She would always start screaming. So I wanted her to do what I told her.” According to defendant’s statement, he still had the gun in his hand when they arrived at the house they shared and defendant opened the passenger side door of his car, ordering Love to get out. After defendant and Love were inside the house, he grabbed her by the collar. Love slipped and fell and defendant straddled her, still holding the gun. The two struggled for the gun, which discharged and killed Love.

In *People v Courts*, 205 Mich App 326; 517 NW2d 785 (1994), the defendant robbed the decedent and his family at gun point. When the decedent attempted to disarm the defendant, the two struggled over possession of the gun, and the decedent was killed when the gun discharged. Observing that the defendant had no right to defend himself from the decedent’s lawful counterattack, the Court stated, “By struggling with [the decedent] over possession of the gun, defendant demonstrated a wanton and wilful disregard of the likelihood that the natural tendency of such a struggle would be death or serious bodily harm.” *Id.* at 329. Similarly, the evidence in this case showed that Love died while struggling to protect herself from defendant’s assault of her at gun point. Viewed most favorably to the prosecution, such evidence was sufficient to find that defendant acted with a wanton and wilful disregard that the natural tendency of his behavior was to cause death or great bodily harm. The trial court, sitting as trier of fact, properly convicted defendant of second-degree murder.

Next, defendant argues that there was insufficient evidence to support his conviction of felonious assault, which was based on his assault of LaTonya Champion. The elements of felonious assault are “(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery.” *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Champion testified at trial that, when defendant first jumped from the porch in front of her house, she screamed. Defendant then pointed the gun at Champion’s head, ordering her to “shut up,” causing Champion to become afraid. This testimony was sufficient to find that defendant assaulted Champion with a dangerous weapon with the intent to place her in reasonable apprehension of an immediate battery.

Defendant contends that the trial court did not address the specific intent element of felonious assault. The court’s findings of fact reflect the court’s belief that alcohol played a large role in the case, and defendant notes that intoxication is a defense to a specific intent crime such as felonious assault. To convict defendant of felonious assault, the court was required to find that defendant had the specific intent to either injure the victim or the intent to put the victim in reasonable fear or apprehension of an immediate battery. *People v Joeseype Johnson*, 407 Mich 196, 210; 284 NW2d 718 (1979). Voluntary intoxication is a defense to a specific intent crime if “the defendant’s mental faculties were so far overcome by the effect of intoxication, as to render him incapable of entertaining the intent.” *People v Savoie*, 419 Mich 118, 133; 349 NW2d 139 (1984).

The trial court did not err in concluding that defendant was not so intoxicated by alcohol that he was incapable of entertaining the intent to assault Champion. The court found that defendant’s behavior was “goal-oriented,” and that he knew what he wanted to do and was able to carry it out. Defendant needed Champion’s silence to accomplish his stated goal of

transporting Love back to the house they shared so that he could try to restore their relationship. The evidence demonstrated that defendant engaged in goal-oriented behavior both before and after the shooting. He was not so intoxicated that he could not form the intent to place Champion in fear that she would be shot if she did not comply with his order to be quiet.

Affirmed.

/s/ Roman S. Gribbs

/s/ Michael J. Kelly

/s/ David H. Sawyer